

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BONNIE I. PATTERSON

Claimant

VS.

ARMOUR SWIFT-ECKRICH, INC.

Respondent

Self-Insured

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Docket No. 230,648

ORDER

Claimant appeals from the preliminary Order Denying Compensation entered by Administrative Law Judge Bryce D. Benedict, dated April 2, 1998.

ISSUES

The issue before the Appeals Board is whether claimant met with personal injury by accident arising out of and in the course of her employment with respondent. Respondent also denies that notice was timely given but, because compensation was denied based upon a finding that claimant did not suffer an accidental injury that arose out of and in the course of employment, the notice issue was not reached by the Administrative Law Judge.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the evidence presented for the purpose of preliminary hearing, the Appeals Board finds the Order of the Administrative Law Judge should be reversed.

Claimant began working for respondent on April 15, 1997, as a sausage packer. Her duties required her to be on her feet the entire time she was working. Claimant began having difficulties with her feet in August 1997. She reported her problems to her supervisor but medical treatment was not provided by the respondent. So she went on her own to Dr. Donald Morgan who referred her to Dr. Brian L. Ware. Claimant first saw Dr. Ware on January 7, 1998. Dr. Ware diagnosed a severe flat foot orthopedic deformity, plantar fasciitis, and degenerative joint disease with the worst problem being in the right foot. Claimant was initially given light duty restrictions but her condition continued to worsen and she was taken off work and placed on medical leave approximately January 30, 1998. She was then referred by Dr. Ware to a surgical specialist,

Dr. Rick D. Grayson. Surgery was performed on her right foot on March 3, 1998. Surgery for the left foot is also planned to be performed after the right foot heals.

Respondent argues that claimant has not established an injury by accident or that the injury aggravated the preexisting condition. Other than a corn on her toe, which did not bother her, claimant denied having had any problems with her feet before going to work for respondent. She, likewise, denied having any problems with standing before working for respondent. Dr. Grayson opined in his letter of February 17, 1998, that "her type of work aggravates her orthopedic deformity. . . . As stated in Dr. Weir's (*sic*) progress notes, this patient was not pathologic until she started working for [respondent]."

It is well established under the workers compensation law in Kansas that when a worker's job duties aggravate or accelerate an existing condition or disease or intensify a preexisting condition, the aggravation becomes compensable as a work-related accident. Demars v. Rickel Manufacturing Corporation, 223 Kan. 374, 573 P.2d 1036 (1978). The risk of employing a worker with a preexisting condition and thereby making the worker susceptible to injury, falls on the employer. Chinn v. Gay & Taylor, Inc., 219 Kan. 196, 547 P.2d 751 (1976).

In this case, the testimony of claimant and the opinions of Dr. Ware and Dr. Grayson are uncontroverted that claimant suffered aggravations of her bilateral foot problems from standing at her job. The aggravation of her foot condition is compensable and claimant is entitled to whatever medical care may be reasonably necessary to cure and relieve the effects of the injury. See K.S.A. 1997 Supp. 44-510(a).

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Bryce D Benedict, dated April 2, 1998, should be, and is hereby, reversed and this matter is remanded to the Administrative Law Judge for further proceedings and orders concerning claimant's request for preliminary benefits.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

c: Jeff K. Cooper, Topeka, KS
Mark E. Kolich, Kansas City, KS
Bryce D. Benedict, Administrative Law Judge
Philip S. Harness, Director